

Attorney Docket Number: FSP0306
Application Number: 10/029,810

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-7-

REMARKS

In an office action mailed on 06/15/2006, claims 1-28 and 29-36 are subject to restriction.

The species which are alleged distinct are (I) claims 1-28, and (II) claims 29-36.

Election is hereby made to claims 1-28, with traverse.

The Claimed Material Is Related Under the Meaning of MPEP 802.01(I)

Claims 1-28 are related to claims 29-36 as a combination and part (subcombination) thereof, respectively. In particular, the claimed cable modem termination package is a part of the combination recited in claims 1 and 4, which recite together that the cable modem termination packages are located at the fiber nodes.

The Inventions are Distinct Under the Meaning of MPEP 802.01(II)

To support a requirement for restriction between combination and subcombination inventions, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., there would be a serious search burden as evidenced by separate classification, status, or field of search. See MPEP § 808.02.

No serious search burden is placed upon the Examiner by the inclusion of claims 1-36 in the same application, because to find art relevant to claim 4, the Examiner would be expected to search for a cable modem termination package having the elements of claims 29-36. The Examiner would be expected to do this because a cable modem termination package having the recited elements (e.g. optical RX/TX) could be expected to be located in the system of claim 1 at the fiber nodes, as recited in claim 4.

The mere fact that more than one search class may be invoked during the course of a proper search is insufficient reason to require restriction of the claims, in light of

Attorney Docket Number: FSP0306
Application Number: 10/029,810

-8-

applicant's traverse that such a search would be expected anyway at least to locate art relevant to claim 4.

The Examiner must demonstrate both distinctness and a serious burden for including the claims together. The applicant has demonstrated that there would be no serious search burden placed on the Examiner by including claims 1-36 in the same application. The restriction should therefore be withdrawn.

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